

**ATTACHMENT P**

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10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 **ERIK TRIMBLE**, individually and on ) Case No.  
13 behalf of all others similarly situated, )  
14 ) **CLASS ACTION**  
Plaintiff, )  
15 ) **COMPLAINT FOR VIOLATIONS**  
vs. ) **OF:**  
16 )  
17 ) 1. NEGLIGENT VIOLATIONS OF  
LIBERTY ACTION GROUP PAC; ) THE TELEPHONE CONSUMER  
18 DOES 1 through 10, inclusive, ) PROTECTION ACT [47 U.S.C.  
19 ) §227 ET SEQ.]  
Defendant(s). ) 2. WILLFUL VIOLATIONS OF THE  
20 ) TELEPHONE CONSUMER  
21 ) PROTECTION ACT [47 U.S.C.  
22 ) §227 ET SEQ.]  
23 ) **DEMAND FOR JURY TRIAL**

24 Plaintiff, ERIK TRIMBLE (“Plaintiff”), on behalf of himself and all others  
similarly situated, alleges the following upon information and belief based upon  
personal knowledge:

25 **NATURE OF THE CASE**

26 1. Plaintiff brings this action for himself and others similarly situated  
27 seeking damages and any other available legal or equitable remedies resulting from

1 the illegal actions of LIBERTY ACTION GROUP PAC (“Defendant”), in  
2 negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular  
3 telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227  
4 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

5 **JURISDICTION & VENUE**

6 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,  
7 a resident of California, seeks relief on behalf of a Class, which will result in at  
8 least one class member belonging to a different state than that of Defendant, a  
9 company with its principal place of business and State of Incorporation in Florida  
10 state. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of  
11 the TCPA, which, when aggregated among a proposed class in the thousands,  
12 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both  
13 diversity jurisdiction and the damages threshold under the Class Action Fairness  
14 Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

15 3. Venue is proper in the United States District Court for the Northern  
16 District of California pursuant to 18 U.S.C. 1331(b) and 18 U.S.C. § 1441(a)  
17 because Defendant does business within the state of California and Plaintiff resides  
18 within this District.

19 **PARTIES**

20 4. Plaintiff, ERIK TRIMBLE (“Plaintiff”), is a natural person residing in  
21 San Francisco, California and is a “person” as defined by 47 U.S.C. § 153 (39).

22 5. Defendant, LIBERTY ACTION GROUP PAC (“Defendant” or  
23 “DEFENDANT”), is a revenue management company and is a “person” as defined  
24 by 47 U.S.C. § 153 (39).

25 6. The above named Defendant, and its subsidiaries and agents, are  
26 collectively referred to as “Defendants.” The true names and capacities of the  
27 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
28 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious

1 names. Each of the Defendants designated herein as a DOE is legally responsible  
 2 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
 3 Complaint to reflect the true names and capacities of the DOE Defendants when  
 4 such identities become known.

5       7. Plaintiff is informed and believes that at all relevant times, each and  
 6 every Defendant was acting as an agent and/or employee of each of the other  
 7 Defendants and was acting within the course and scope of said agency and/or  
 8 employment with the full knowledge and consent of each of the other Defendants.  
 9 Plaintiff is informed and believes that each of the acts and/or omissions complained  
 10 of herein was made known to, and ratified by, each of the other Defendants.

### FACTUAL ALLEGATIONS

12       8. Beginning in or around August 2016, Defendant contacted Plaintiff on  
 13 his cellular telephone ending in -5080, in an effort to sell or solicit its services.  
 14 Defendant called, including but not limited to around August 8, 2016 at 9:32 a.m.,  
 15 August 12, 2016 at 3:19 p.m., August 15, 2016 at 9:41 a.m., August 16, 2016 at  
 16 4:35 p.m., and August 17, 2016 at 10:55 a.m. Defendant often called from  
 17 telephone numbers (646) 604-9033, (202) 813-9371, (646) 600-8266, and (202)  
 18 599-9203.

19       9. Defendant used an “automatic telephone dialing system”, as defined  
 20 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to sell or solicit its  
 21 business services.

22       10. Defendant’s calls constituted calls that were not for emergency  
 23 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

24       11. Defendant’s calls were placed to telephone number assigned to a  
 25 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
 26 pursuant to 47 U.S.C. § 227(b)(1).

27       12. Plaintiff is not a customer of Defendant’s services and has never  
 28 provided any personal information, including his cellular telephone number, to

1 Defendant for any purpose whatsoever. In addition, on at least one occasion,  
2 Plaintiff answered the telephone and told Defendant to stop calling him.  
3 Accordingly, Defendant never received Plaintiff's "prior express consent" to  
4 receive calls using an automatic telephone dialing system or an artificial or  
5 prerecorded voice on her cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

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7 **CLASS ALLEGATIONS**

8 13. Plaintiff brings this action on behalf of himself and all others similarly  
9 situated, as a member of the proposed class (hereafter "The Class") defined as  
10 follows:

11 All persons within the United States who received any  
12 telephone calls from Defendant to said person's cellular  
13 telephone made through the use of any automatic  
14 telephone dialing system or an artificial or prerecorded  
15 voice and such person had not previously consented to  
16 receiving such calls within the four years prior to the  
filing of this Complaint

17 14. Plaintiff represents, and is a member of, The Class, consisting of All  
18 persons within the United States who received any telephone calls from Defendant  
19 to said person's cellular telephone made through the use of any automatic telephone  
20 dialing system or an artificial or prerecorded voice and such person had not  
21 previously not provided their cellular telephone number to Defendant within the  
22 four years prior to the filing of this Complaint.

23 15. Defendant, its employees and agents are excluded from The Class.  
24 Plaintiff does not know the number of members in The Class, but believes the Class  
25 members number in the thousands, if not more. Thus, this matter should be  
26 certified as a Class Action to assist in the expeditious litigation of the matter.

27 16. The Class is so numerous that the individual joinder of all of its  
28

1 members is impractical. While the exact number and identities of The Class  
 2 members are unknown to Plaintiff at this time and can only be ascertained through  
 3 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
 4 The Class includes thousands of members. Plaintiff alleges that The Class  
 5 members may be ascertained by the records maintained by Defendant.

6       17. Plaintiff and members of The Class were harmed by the acts of  
 7 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
 8 and Class members via their cellular telephones thereby causing Plaintiff and Class  
 9 members to incur certain charges or reduced telephone time for which Plaintiff and  
 10 Class members had previously paid by having to retrieve or administer messages  
 11 left by Defendant during those illegal calls, and invading the privacy of said  
 12 Plaintiff and Class members.

13       18. Common questions of fact and law exist as to all members of The  
 14 Class which predominate over any questions affecting only individual members of  
 15 The Class. These common legal and factual questions, which do not vary between  
 16 Class members, and which may be determined without reference to the individual  
 17 circumstances of any Class members, include, but are not limited to, the following:

- 18           a. Whether, within the four years prior to the filing of this Complaint,  
 19           Defendant made any call (other than a call made for emergency  
 20           purposes or made with the prior express consent of the called party)  
 21           to a Class member using any automatic telephone dialing system or  
 22           any artificial or prerecorded voice to any telephone number assigned  
 23           to a cellular telephone service;
- 24           b. Whether Plaintiff and the Class members were damages thereby, and  
 25           the extent of damages for such violation; and
- 26           c. Whether Defendant should be enjoined from engaging in such conduct  
 27           in the future.

28       19. As a person that received numerous calls from Defendant using an  
 automatic telephone dialing system or an artificial or prerecorded voice, without

Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The Class.

20. Plaintiff will fairly and adequately protect the interests of the members of The Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

21. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

22. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

23. Defendant has acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of the California Class as a whole.

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## **FIRST CAUSE OF ACTION**

## **Negligent Violations of the Telephone Consumer Protection Act**

47 U.S.C. §227 et seq.

24. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

25. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

26. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

27. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## **SECOND CAUSE OF ACTION**

## **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

47 U.S.C. §227 et seq.

28. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-23.

29. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

30. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

31. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

## **FIRST CAUSE OF ACTION**

## Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*; and
  - Any and all other relief that the Court deems just and proper.

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## **SECOND CAUSE OF ACTION**

## **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

47 U.S.C. §227 et seq.

- 1           • As a result of Defendant's willful and/or knowing violations of 47  
2           U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to  
3           and request treble damages, as provided by statute, up to \$1,500, for  
4           each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47  
5           U.S.C. §227(b)(3)(C); and  
6           • Any and all other relief that the Court deems just and proper.

7  
8           Respectfully Submitted this 31<sup>st</sup> day of August, 2016.

9           LAW OFFICES OF TODD M. FRIEDMAN, P.C.

10          By: /s Todd M. Friedman

11          Todd M. Friedman

12          Law Offices of Todd M. Friedman

13          Attorney for Plaintiff